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By eFile

June 13, 2014

Hon. Cheryl L. Pollak, U.S.M.J.
U.S. District Court for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: The Wornick Company v. Trans-Packers Services Corp.
1:11-cv-03008 (FB)(CLP)

Dear Judge Pollak:

We represent Plaintiff, The Wornick Company ("Wornick"), in the above-referenced litigation (the "Federal Action"). As Your Honor is aware, related proceedings concerning insurance coverage, among other issues, are pending in New York Supreme Court (the "State Action"). At the March 5, 2014 discovery conference, Your Honor suggested that Wornick invite the State Action litigants to attend the Federal Action depositions to streamline discovery and prevent duplicative depositions. We write to request Your Honor's clarification regarding the State Action litigants' participation in the Federal Action deposition of Wornick's CFO, Mr. McDulin.

In accordance with Your Honor's preference, Wornick invited the State Action litigants to attend Mr. McDulin's deposition, which is scheduled for Tuesday, June 17, 2014. In its invitation, Wornick explained that the deposition would be limited to one day of seven hours pursuant to Federal Rule of Civil Procedure 30(d)(1). Wornick offered to extend the deposition for four additional hours "if all parties (in both actions) agree that this deposition will be for both cases and that Mr. McDulin will not be recalled to testify further at deposition." See Exhibit A.

Zurich – a State Action litigant – has advised that it intends to attend Mr. McDulin's deposition in the Federal Action and to reserve its rights to depose Mr. McDulin at a later date in the State Action. See Exhibit B. Wornick believes that requiring Mr. McDulin to testify on the same subject in two litigations – before the same parties – is unduly burdensome and unfair.

We respectfully ask that Your Honor clarify whether the State Action litigants should be able to attend and/or participate in this Federal Action deposition given that at least one party intends to re-notice Mr. McDulin's deposition in the State Action. Wornick notes that discovery in the State Action is currently stayed, and that

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thus far Judge Madden has ordered discovery only as to (i) damages and (ii) other insurance. If Your Honor requires that the State Action litigants attend the Federal Action deposition – while maintaining the right to re-depose Mr. McDulin in the State Action – Wornick respectfully requests that the Court enter a protective order (i) prohibiting the State Action litigants from asking questions and (ii) limiting the deposition to one day of seven hours. See Fed. R. Civ. P. 26(c)(1).

We appreciate Your Honor's attention to this matter.

Respectfully submitted,

/s/ Anna M. Piazza

Anna M. Piazza

cc: Robert Del Grosso, Esq. (via email)
Lance Kalik, Esq. (via email)
Michael Marone, Esq. (via email)
Evan Michialidis, Esq. (via email)
Christopher D. O'Leary, Esq. (via email)
Eric G. Siegel, Esq. (via email)
John T. Sullivan (via email)
Stephen Sussman, Esq. (via email)
Tracey K. Wishert, Esq. (via email)

Exhibit A

From: Piazza, Anna M.
Sent: Tuesday, June 10, 2014 3:21 PM
To: 'Christopher O'Leary'; 'Sussman, Stephen'; Michailidis, Evangelos; LKalik@RIKER.com; twishert@riker.com; mmarone@mdmc-law.com; jsullivan@mdmc-law.com; esiegel@mdmc-law.com; Robert DelGrosso; Lorraine Armenti
Cc: Pudell, Steven J.; Stanisz, Janine M.
Subject: Wornick v. TP: McDulin deposition

Dear Counsel,

Please be advised that we will be offering Dustin McDulin, Wornick's CFO, for deposition on **Tuesday, June 17, 2014 at 10:00 a.m.** at 80 Pine St., #24, New York, NY 10005. You are invited to attend.

Please note that the deposition will be limited to 1 day of 7 hours, as per Federal Rule of Civil Procedure 30(d)(1).

We will agree to have the deposition extend beyond 7 hours – for an additional 4 hours – if all parties (in both actions) agree that this deposition will be for both cases and that Mr. McDulin will not be recalled to testify further at deposition. If we cannot come to such an agreement, we will proceed under the default Federal Rule.

Thank you,
Anna



Anna M. Piazza
Shareholder

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[Biography](#)

Exhibit B

From: Christopher O'Leary <coleary@coughlinduffy.com>
Sent: Thursday, June 12, 2014 11:56 AM
To: Piazza, Anna M.; 'Sussman, Stephen'; Michailidis, Evangelos; LKalik@RIKER.com; twishert@riker.com; mmarone@mdmc-law.com; jsullivan@mdmc-law.com; esiegel@mdmc-law.com; Robert DelGrosso; Lorraine Armenti
Cc: Pudell, Steven J.; Stanisz, Janine M.
Subject: RE: Wornick v. TP: McDulin deposition

Counsel,

Please be advised that Zurich accepts Wornick's invitation and plans to attend the deposition of Dustin McDulin on Tuesday, June 17, 2014. However, we do not consent to Wornick's proposal of extending the deposition for an additional four (4) hours in exchange for Zurich waiving its right to depose Mr. McDulin in the pending state court action.

As you know, on December 3, 2013, Zurich served deposition notices on Wornick, including one specifically requesting the deposition of Mr. McDulin. By letter dated December 11, 2013, Wornick advised that it would respond to or object to Zurich's deposition notices if and when the discovery stay was lifted in the state court action. As such, Zurich plans to attend Tuesday's deposition but reserves all of its rights with respect to the previously served deposition notices in the state court action.

Please feel free to contact me if you have any questions.

Regards,
Chris

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